Rockland-Bamberg Print Works, Incorporated *and* Machine Printers and Engravers Association of the United States. Case 11–CA–6634

November 19, 1976

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND WALTHER

Upon a charge filed on June 28, 1976, by Machine Printers and Engravers Association of the United States, herein called the Union, and duly served on Rockland-Bamberg Print Works, Incorporated, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 11, issued a complaint on July 28, 1976, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on June 7, 1976, following a Board election in Case 11–RC–4101 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about June 18, 1976, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On August 6, 1976, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 13, 1976, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on August 24, 1976, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause, entitled "Employer's Statement in Opposition to General Counsel's Motion for Summary Judgment."

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, the Respondent attacks the certified Union's majority representative status contending that: (1) its objections warranted setting aside the election and, alternatively, (2) the denial of a full hearing on its objections deprived it of procedural due process. On the other hand, counsel for the General Counsel argues that all material issues have been previously decided in the underlying representation case and may not be relitigated and that there are no litigable issues of fact requiring a hearing. We agree with counsel for the General Counsel.

Review of the record herein, including that in the representation proceeding, Case 11–RC–4101, establishes that, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on December 18, 1975, among the employees in the stipulated unit. The tally of ballots revealed that of the five eligible voters four voted for, and one against, the Union; there were no challenged ballots. The Respondent filed timely objections alleging, in substance, that the Union and/or its agents (1) threatened employees with reprisals; (2) deliberately misrepresented certain material facts to employees during the election campaign when the Respondent had no adequate time to reply; (3) promised employees during the campaign that it would waive initiation fees and dues; and (4) totally destroyed the laboratory conditions for a free and fair election. After investigation, the Acting Regional Director on March 24, 1976, issued his Report on Objections in which he found that the objections were without merit[2] and recommended that they be overruled and

[1] Official notice is taken of the record in the representation proceeding, Case 11–RC–4101, as the term "record" is defined in Secs 102 68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc*, 166 NLRB 938 (1967), enfd. 388 F 2d 683 (C.A 4, 1968), *Golden Age Beverage Co*, 167 NLRB 151 (1967), enfd 415 F 2d 26 (C A 5, 1969), *Intertype Co* v *Penello*, 269 F Supp 573 (D C Va, 1967), *Follett Corp*, 164 NLRB 378 (1967), enfd 397 F 2d 91 (C A 7, 1968), Sec 9(d) of the NLRA, as amended

[2] Considering the objections in the light of the evidence proffered by the Respondent, the Acting Regional Director found that, as to Objection 1, the statement of a union official that an employee should sign a union card so that the official could protect him, if anything happened, was not a threat of reprisal, as to Objection 2, the statement of the same union official to an employee that this Union never had any strikes, even if a misrepresentation, was not sufficient to warrant setting aside the election since the Respondent had earlier raised the matter of possible strikes and the employees had sufficient opportunity to make an independent evaluation, as to Objection 3, the waiver of initiation fees did not fall within the proscription of the Supreme Court's decision in *N L R B* v. *Savair Manufacturing Co*, 414 U.S. 270 (1973), as it was not conditioned on the employees' vote nor limited to employees who joined the Union prior to the election; and as to Objection 4, the Respondent failed to present any evidence

the Union certified. Thereafter, the Respondent filed timely exceptions to the report on objections, with a supporting brief, reiterating its objections and requesting the Board to set aside the election or, alternatively, to conduct a full adversary hearing to resolve the substantial and material issues raised by its objections. On June 7, 1976, the Board issued its Decision and Certification of Representative in which, after considering the record in the light of the Respondent's exceptions and brief, it adopted the Acting Regional Director's findings and recommendations and certified the Union. The Board thereby found, in effect, not only that the Respondent's objections did not warrant setting aside the election but also that the Respondent was not denied procedural due process because the objections raised no substantial and material issues warranting a hearing.[3]

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is a South Carolina corporation with a plant located in Bamberg, South Carolina, where it is engaged in the finishing of textile products. During the past 12 months, Respondent has received materials from points directly outside the State of South Carolina, whose value exceeded $50,000, and during said period it has shipped products to points directly outside the State of South Carolina whose value exceeded $50,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Machine Printers and Engravers Association of the United States is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All journeymen and apprentice machine printers employed at the Employer's Bamberg, South Carolina, finishing plant, but excluding all other employees, guards and supervisors as defined in the Act.

2. The certification

On December 18, 1975, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 11, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on June 7, 1976, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about June 10, 1976, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about June 18, 1976, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since June 18, 1976, and at all times thereafter, re-

[3] See *Drew University*, 226 NLRB 218 (1976), and cases cited in fn 2 therein

[4] See *Pittsburgh Plate Glass Co* v *N.L.R.B*, 313 U.S. 146, 162 (1941), Rules and Regulations of the Board, Secs 102.67(f) and 102.69(c)

fused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel,* 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company,* 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Rockland-Bamberg Print Works, Incorporated, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Machine Printers and Engravers Association of the United States is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeymen and apprentice machine printers employed at the Employer's Bamberg, South Carolina, finishing plant, but excluding all other employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since June 7, 1976, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about June 18, 1976, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Rockland-Bamberg Print Works, Incorporated, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Machine Printers and Engravers Association of the United States as the exclusive bargaining representative of its employees in the following appropriate unit:

> All journeymen and apprentice machine printers employed at the Employer's Bamberg, South Carolina, finishing plant, but excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Bamberg, South Carolina, plant, copies of the attached notice marked "Appendix." [5] Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Machine Printers and Engravers Association of the United States as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All journeymen and apprentice machine printers employed at the Employer's Bamberg, South Carolina, finishing plant, but excluding all other employees, guards and supervisors as defined in the Act.

ROCKLAND-BAMBERG PRINT WORKS, INCORPORATED